**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11173 of 2001**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHIEF OFFICER KESHOD MUNICIPALITY - Petitioner(s)**
**Versus**
**PRADEEPKUMAR MAGANLAL VAJA - Respondent(s)**

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**Appearance :**
MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR ANAND L SHARMA for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 19/01/2006**

**ORAL JUDGMENT**

1. This petition is directed against the award dated 30.4.2001 passed by the Labour Court, Junagadh, in Reference (LCJ) No.243 of 1997 whereby the petitioner was directed to reinstate the respondent in service with 20% back wages.

2. The short facts of the case are that the respondent workman was working as Peon with the petitioner Municipality. According to the workman, without following provisions of law, the the services of the respondent came to be terminated. He, therefore, raised a dispute which was referred to the Labour Court and the Labour Court passed the aforesaid award which is challenged in the present petition.

3. Learned counsel for the petitioner submitted that the respondent workman has never completed 240 days of service. She submitted that the petitioner has not terminated the services of the respondent and that the petitioner cannot be treated to be an 'industry'.

4. Learned counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case and recorded a finding that there is violation of provisions of section 25G and 25H of the Act. He, therefore, submitted that no case is made out to cause interference in the present petition.

5. As a result of hearing and perusal of the record, it is found that the Labour Court has clearly recorded a finding that the respondent had worked for more than four years. It was also found that no notice nor notice pay was given to the respondent before terminating the services of the respondent. The Labour Court also found that there is violation of provisions of section 25F, 25G and 25H of the Industrial Disputes Act. Learned counsel for the petitioner is unable to controvert these findings of the Labour Court. Therefore, I am of the view that the Labour Court has rightly passed the award of reinstatement with continuity of service.

6. However, while awarding back wages the Labour

Court has not given any cogent and convincing reasons for grant of back wages. The back wages were given as a matter of course. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Similar view has been taken in the cases of A.P. State Road Transport Corporation and Ors. V. Abdul Kareem, reported in (2005)6 SCC 36, U.P.S.R.T.C. V. Mahendra Nath Tiwari & Anr. Reported in 2005 AIR SCW 6341 and U.P. State Brassware Corpn. Ltd. & Anr. V. Udai Narain Pandey, reported in 2005 AIR SCW 6314. In above view of the matter, I am of the opinion that the respondent cannot be said to be

entitled for back wages.

7. In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The award of the Labour Court is modified to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

**[K.S. JHAVERI, J.]**

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